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Federal Communications Commission

DA 93-1204

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

OCT 18 5 20 PM '93

MM Docket No. 93-262

DISPATCHED BY

In the Matter of

Delta Radio, Inc.

Licensee of Station WDTL(AM)
Cleveland, Mississippi

Order to Show Cause Why the
License for Station WDTL(AM)
Cleveland, Mississippi Should
Not be Revoked

**ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER**

Adopted: October 5, 1993;

Released: October 18, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Service Division, Mass Media Bureau, has before him for consideration: (a) the license held by Delta Radio, Inc. ("Delta") for Station WDTL(AM), Cleveland, Mississippi; and (b) the results of an investigation into WDTL(AM)'s silent status.¹

2. The Commission's records indicate that WDTL(AM) has been off the air since June 4, 1990.² The licensee's last request for authority to remain silent was granted through April 29, 1993 by letter, dated January 29, 1993, from the Chief, AM Branch, Audio Services Division, Mass Media

Bureau. In that letter, Delta was advised that any future requests for authority to remain silent must be accompanied by a detailed summary of steps being taken to return WDTL(AM) to on-air operations. By letter dated April 27, 1993, Delta responded that because of WDTL(AM)'s transmitter problems and WDTL-FM's personnel problems, it was unable to return WDTL(AM) to the air.³ This letter failed to include a timetable detailing steps being taken by Delta to return WDTL(AM) to on-air operations and it appears that no substantial progress has been made by Delta to return WDTL(AM) to the air. Because Delta has not demonstrated that causes beyond its control prevent it from resuming broadcast operations, Delta is in apparent violation of Sections 73.1740(a)(4) of the Commission's Rules.⁴ Because of the protracted period of time in which the station has been silent, and because Delta apparently lacks the ability and/or intent to restore WDTL(AM) to broadcast status, Delta is also in apparent violation of 73.1750 of the Commission's Rules.⁵

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Delta Radio, Inc. is DIRECTED TO SHOW CAUSE why the license for Station WDTL(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Delta Radio, Inc. has the capability and intent to expeditiously resume broadcast operations of WDTL(AM) consistent with the Commission's Rules.

(b) To determine whether Delta Radio, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Delta Radio, Inc. is qualified to be and remain the licensee of Station WDTL(AM).

4. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the

¹ The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See *Debrine Communications, Inc.*, 7 FCC Rcd 2118 (1992).

² Delta is also the licensee of WDTL-FM, Cleveland, Mississippi, which had been silent but which returned to the air on March 16, 1992.

³ Delta also states that WDTL(AM) requires a new transmitter and Delta does not want to purchase one until it determines if it will be allotted a frequency on the new AM "expanded band." Delta, however, has failed to file a petition to migrate to the "expanded band" and the filing window for such petitions closed on June 30, 1993.

⁴ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontin-

ued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁵ Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

5. IT IS FURTHER ORDERED, That to avail himself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving his right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁶

6. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for WDTL(AM), Cleveland, Mississippi, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

⁶ The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596, n.3 (1989).